

Application No. 10/072,149
Amendment C
Reply to Office Action of August 14, 2003

Remarks/Arguments

The above-identified application has been carefully reviewed and amended in light of the Examiner's communication (office action) mailed August 14, 2003.

Applicant has canceled claims 13-22 and 26 without prejudice. Applicant reserves the right to seek patent protection on these claims at a later date, for example in one or more related applications.

Applicant has amended claims 1-3 and 25 in order to more clearly define embodiments of the present invention over the prior art.

In particular, claim 1 has been amended to clarify the erosion control system of the present invention as comprising a flexible matting including a core layer formed of a fiber matrix comprising randomly oriented fibers, the fiber matrix forming a substantially flat upper surface and a substantially flat lower surface, and a permanent upper layer bonded to the substantially flat upper surface of the core layer. The flexible matting is structured to resist trapping of sediment within the matting and to allow flowing particulate matter to pass freely over the matting during a hydraulic event in order to control erosion of a substantially unvegetated sloped surface when the matting is placed on a substantially unvegetated sloped surface.

In the latest office action, the Examiner has rejected claims 1, 10-12, and 23-25 under 35 U.S.C. 102(b) as being anticipated by

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Peterson, U.S. Patent No. 5,257,878. Applicant traverses this rejection as it pertains to the present claims.

The erosion control systems, as defined in presently amended claim 1, comprise a flexible matting including a core layer formed of a fiber matrix forming a substantially flat upper surface and a substantially flat lower surface, and a permanent upper layer bonded to the substantially flat upper surface. The flexible matting is structured to resist trapping of sediment within the matting and to allow flowing particulate matter to pass freely over the matting during a hydraulic event in order to control erosion of a substantially unvegetated sloped surface when the matting is placed on a substantially unvegetated sloped surface.

This embodiment of the invention, which includes the feature of being structured to resist trapping of sediment and to allow flowing particulate matter to pass freely over the matting during a hydraulic event, is disclosed throughout the specification as filed, for example on page 8, first full paragraph thereof. Such structure is provided, at least in part, by the planar upper surface of the matting defined by the upper layer and the upper surface of the fiber matrix, as well as the densely compacted fiber matrix.

Applicant respectfully submits that it is well known that to anticipate a claimed invention under 35 U.S.C. 102(b), a reference must disclose each and every element of the claim at issue and the elements of the claim must be arranged in the same way to achieve the same result which is asserted to be the inventive function.

Applicant submits that Peterson does not disclose, teach or

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suggest the present invention as defined in the present claims, as amended. For example, Peterson does not disclose, teach or even suggest a flexible matting structured to resist trapping of sediment within the matting and to allow flowing particulate matter to pass freely over the matting during a hydraulic event, as recited in claim 1.

Indeed, Peterson clearly teaches away from this feature of the present invention. In particular, Peterson clearly directly and expressly discloses a sediment mat specifically structured to entrap sediment in a flowing body of water. Therefor, Peterson does not disclose, teach or even suggest an erosion control system comprising a flexible matting structured to resist trapping of sediment within the matting, such as claimed in amended claim 1.

See for example, Peterson, column 2, lines 49-53, which states:

"It is an object of the invention to provide an improved *sediment-catching* device.

It is another object of this invention to provide a non-invasive sediment mat for *entrapping* and removing loose sediment." [Italics mine]

This sediment entrapment structure of the Peterson system is a critical, necessary feature of the disclosed system. The mat disclosed by Peterson is designed to be secured to a bottom of a stream and is structured with a loose arrangement of straw or other material to capture sediment within the stream such that the sediment laden mat can be removed from the river bed and placed on a bank of the stream to be used as a sediment-rich growing medium. See for example, Peterson, column 1, lines 55-58, which states:

"The upper, sediment-permeable surface of the mat is loosely woven to allow

the sediment to pass into the mat, which then filters down into the center absorptive layer. The lower sediment-impermeable layer of the mat is tightly woven in order to ensure that the trapped sediments do not escape."

The Peterson discloses a sediment mat which is comprised of a sediment porous upper surface and loosely arranged excelsior or other fibers for entrapping sediment. See Peterson, at column 2, lines 37-39, which states "The mat comprises a loose layer of absorptive material such as excelsior or straw held in place by the top and bottom layers."

In contrast, the present invention, for example, as defined in amended claim 2, is comprised of a "compacted fiber matrix" which provides one specific structure for resisting trapping of sediment within the matting and for allowing flowing particulate matter to pass freely over the matting during a hydraulic event, as recited in the present claims.

This feature defined in amended claim 2 is disclosed, for example, on page 7, lines 12-14, of the specification as filed, which states that the matting comprises an upper netting layer and a lower netting layer, wherein the netting layers and are preferably stitched together, compacting the core layer 16 therebetween.

In view of the above, applicant submits that the present claims are not anticipated by Peterson under 35 U.S.C. 102(b).

The Examiner has rejected dependent claims 2-8 under 35 U.S.C. 103(a) as being unpatentable over Peterson as applied to claim 1.

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Applicant traverses this rejection as it pertains to the claims as presently amended.

As stated hereinabove, Peterson does not disclose, teach or suggest the present invention as defined in independent claim 1. Moreover, Peterson does not disclose, teach or even suggest the erosion control systems including the additional feature or features set forth in any of the dependent claims. As noted above, Peterson actually teaches directly away from the invention set forth in the present claims.

In view of the above, applicant submits that the present claims, that is claims 1 to 12, and 23 to 25, are unobvious from and patentable over Peterson under 35 U.S.C. 103(a).

The Examiner has rejected claim 9 under 35 U.S.C. 103(a) as being unpatentable over Peterson as applied to claim 1 in light of Lancaster or Granite Seed Company. Applicant traverses this rejection.

Dependent claim 9 defines an embodiment of the invention as claimed in amended claim 1, wherein the fiber matrix comprises a material selected from coconut fibers, flax fibers, polypropylene fibers and combinations thereof.

As stated hereinabove, Peterson does not disclose, teach or even suggest the present erosion control system as defined in independent claim 1, as presently amended, let alone such a system having a fiber matrix comprising a material as set forth in claim 9. Neither Lancaster nor Granite Seed Company supplies the deficiencies apparent in the teachings of Peterson. Peterson, even

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if erroneously combined with Lancaster or Granite Seed Company, does not disclose, teach or even suggest a flexible matting structured to resist trapping of sediment within the matting and to allow flowing particulate matter to pass freely over the matting during a hydraulic event in order to control erosion of a substantially unvegetated sloped surface when the matting is placed on a substantially unvegetated sloped surface, as recited in the present claims.

Therefor, applicant submits that claim 9 is unobvious from and patentable over Peterson, in view of one or both of Lancaster and Granite Seed Company, under 35 U.S.C. 103(a).


The Examiner has rejected claims 14, 16 and 18-22 under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of Granite Seed Company. Applicant has canceled these claims without prejudice, and reserves the right to pursue such claims, or claims similar thereto, in one or more later filed, related patent applications.

In conclusion, applicant submits that claims 1-12 and 23-25 are allowable and respectfully requests the Examiner to pass the above-identified application to issuance at an early date. Should

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any matters remain unresolved, the Examiner is requested to call
(collect) applicant's attorney at the telephone number given below.

Respectfully submitted,


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